IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE PIUS C.KURIAKOSE

THURSDAY, THE 2ND AUGUST 2007 / 11TH SRAVANA 1929

OP.No. 5641 of 2003(V)

PETITIONER:

THE NEW INDIA ASSURANCE COMPANY LTD.,
REPRESENTED BY ITS ASST.ADMINISTRATIVE OFFICER,
REGIONAL OFFICE, M.G.ROAD, KOCHI-11.

BY ADV. SRI.P.R.RAMACHANDRA MENON

RESPONDENTS:
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1. **MAISY UMMAN, W/O.THE LATE UMMAN,**
   AGED ABOUT 71 YEARS, RESIDING AT 'OPTICS',
   GENERAL ROAD, CANTONMENT, KANNUR.

2. **RAJ ISSAC UMMAN, S/O.THE LATE UMMAN,**
   AGED ABOUT 43 YEARS, RESIDING AT -DO-
   -DO- -DO-

3. **MOTI UMMAN, S/O.THE LATE UMMAN,**
   AGED ABOUT 41 YEARS, RESIDING AT -DO-

4. **THE DISTRICT COLLECTOR, KANNUR.**

5. **THE MOTOR ACCIDENTS CLAIMS TRIBUNAL,**
   KANNUR.

BY ADV. SRI.GRASHIOUS KURIAKOSE

THIS ORIGINAL PETITION HAVING BEEN FINALLY HEARD ON 02/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

ORDER ON C.M.P.NO.9841/2003 IN O.P.NO.5641/2003 V

DISMISSED

2/08/207 **SD/- PIUS C. KURIAKOSE, JUDGE**

APPENDIX

PETITIONER'S EXHIBITS:

EXT.P1: **COPY OF THE OPERATIVE PORTION OF THE AWARD DTD. 16/11/90 PASSED BY THE MACT, KANNUR IN O.P.(MV) 465/88.**

EXT.P2: **COPY OF THE JUDGMENT DTD. 12/01/2000 PASSED BY THIS HON'BLE COURT IN M.F.A. 356/91.**

EXT.P3: **COPY OF THE REVIEW PETITION BEARING NO.I.A.1903/2000 IN O.P.(MV) 465/88 FILED BY THE RESPONDENTS 1 TO 3 BEFORE THE MACT, KANNUR.**

EXT.P4: **COPY OF THE COUNTER FILED BY THE PETITIONER IN THE ABOVE I.A.**

EXT.P5: **COPY OF THE COUNTER FILED BY THE PETITIONER IN I.A. 1103/2002 IN O.P.(MV) 465/88 BEFORE THE MACT, KANNUR.**

EXT.P6: **COPY OF THE I.A.1103/02 CONTAINING THE ORDER DTD. 6/11/2002 PASSED BY THE MACT, KANNUR.**

/TRUE COPY/

P.A.TO JUDGE

KSS

PIUS C. KURIAKOSE, J.

O.P. NO. 5641 OF 2003

Dated this the 2nd day of August, 2007

JUDGMENT

Ext.P6 order, by which the Motor Accident Claims Tribunal allowed an application filed by the applicants in the claim petition, under Section 174 of the Motor Vehicles Act for enforcing recovery of balance amount allegedly due to them under the award is under challenge. The amounts claimed in the application were due by way of interest payable on the award amount at the enhanced rate of 15% which was contemplated in the event of the petitioner failing to pay the amounts within one month of the award. The learned counsel for the petitioner submits that a Miscellaneous First Appeal was preferred to this court against the award and till the final disposal of that first appeal the operation of the award stood stayed. Immediately after the first appeal was dismissed the entire amounts due under the award (interest calculated at the rate of 12%) was

deposited. On account of the stay the escalation clause regarding interest was not operative during the pendency of the appeal.

I notice some merit in the above submissions. But I find that it is a very cryptic order which has been passed by the learned Tribunal I set aside the impugned order and direct the Tribunal to pass fresh orders after ascertaining whether the claim of the petitioner that all through the Miscellaneous First appeal there was a stay from this court and in the light of the judicial precedents which may be cited before the Tribunal on behalf of the petitioner. Fresh orders as directed above shall be passed at the earliest and at any rate within three months of receiving a copy of this judgment.

PIUS C. KURIAKOSE,
JUDGE.

Dpk

PIUS C.KURIAKOSE, J

O.P.NO.5641/2003 V

JUDGMENT

2ND AUGUST 2007